



Michael Schwimmer
Chief Executive Officer

February 12, 2008

The Honorable Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 07-198

**Review of the Commission's Program Access Rules and Examination of
Program Tying Arrangements**

Dear Chairman Martin:

This letter addresses the matter of the well-known practice by broadcast and cable network groups, in their licensing negotiations with cable operators, of tying the availability of broadcast networks and key cable content to force carriage on cable systems of less desirable or less popular programming that cable operators otherwise would choose not to distribute, a practice that the Commission currently is scrutinizing in the referenced proceeding. In particular, I wish to focus on the devastating impact upon consumers and stand-alone networks such as Sí TV that has been inflicted by years of unrestrained tying practices of powerful media companies in their dealings with cable and satellite operators. I bring to this subject a highly knowledgeable perspective and one that is unique in that I have been on both the distribution and content side in this arena. From 1997 to 2005, I was the head of programming and chief negotiator for all content acquisition of EchoStar Communication's DBS satellite system known as Dish Network. For the last two years, I have been the Chief Executive Officer of Sí TV, an independent network targeting the English speaking Latino audience in America.

Lest there be any debate about the extent to which tying practices exist, I can say from personal experience that they are omnipresent and profoundly influence the outcome of negotiations for the launch of new or less well-penetrated networks of all major providers of broadcast and cable programming assets. In what often is characterized as a "zero sum game" in which the money (and the bandwidth, in the distributor's case) will end up in either the distributor's pocket or the programmer's, the discussion does not center upon the quality, originality or value of the programming, and even less so on consumer demand. Rather, the crux of these high stakes negotiations is the additional programming the distributor must agree to carry in order to retain access to highly popular, must-have programming (e.g., ESPN or MTV), without which the distributor cannot remain competitive.

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The destructive impact that this coercive environment has upon the marketplace cannot be overstated:

- Distributors are harmed by having less bandwidth and cash resources to acquire fresh, new programming from alternative, independent sources.
- Consumers are harmed through (1) higher monthly bills caused by the “cram down” of media conglomerates' affiliated networks, much of which is often little more than recycled or repurposed programming, and (2) the reduced availability of original, diverse programming content from independent networks.
- Independent programmers, for their part, either never get off the ground due to lack of available funding or struggle to reach critical mass because of the near impossibility of securing sufficient carriage on cable systems to generate the necessary level of licensing and advertising revenues.

In short, unrestrained tying practices, when combined with the current state of consolidation among both cable operators and programmers alike, have left American viewers without one of the principal benefits of a free television marketplace: rich and diverse content from a broad array of providers. While government intervention is always a last resort, in this case it is warranted because the marketplace has shown itself incapable of serving the key public interest of promoting the free speech of many, instead of just a few powerful media companies.

We do not advocate a particular remedy, as we believe the Commission is best positioned to do so, taking all of the relevant circumstances into account.

I welcome the opportunity to discuss this letter and the underlying issues with you and your fellow commissioners.

Respectfully submitted,

Michael Schwimmer
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Sí TV, Inc.

cc: Commissioner Michael J. Copps, Federal Communications Commission
Commissioner Jonathan S. Adelstein, Federal Communications Commission
Commissioner Deborah Taylor Tate, Federal Communications Commission
Commissioner Robert M. McDowell, Federal Communications Commission
Ms. Marlene Dortch, Secretary, Federal Communications Commission

